HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.20211 of 2003

Dated 01.08.2007

Between:

B.Venkatasubbamma.

…Petitioner

and

The Regional Transport Officer and another.

…Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 20211 of 2003

O R D E R:

Petitioner is the owner of a Sleeper Coach bearing No.AP04-U-3488. The Motor Vehicle Inspector checked the vehicle and issued a fitness certificate on 23.04.2002. On the basis of the same, the vehicle was registered on 24.04.2002. On the strength of the permit issued by the competent authority, the petitioner has been plying the vehicle.

On 25.02.2003, the petitioner was required to produce the vehicle for inspection. A check report was prepared, pointing out certain discrepancies, mostly as regards the construction of the vehicle. On the same day, the fitness certificate of the vehicle was cancelled, on the ground that the vehicle does not accord with the requirement under Section 351-A of the A.P.Motor Vehicles Rules, 1989 (for short 'the Rules').

The petitioner filed W.P.No.3895 of 2003. The same was disposed of, at the admission stage, and it was observed that the cancellation of the fitness certificate, without issuing notice to the petitioner, cannot be sustained. The order of cancellation was directed to be treated as a show cause notice and it was left open to the petitioner to submit explanation.

The petitioner submitted her explanation on 24.03.2003. After receiving the same, the respondents directed the petitioner to produce the vehicle on 18.09.2003. On the same day, the impugned order was passed by the first respondent, stating that the vehicle does not conform to the specifications under Rule 351-A of the Rules and the petitioner was directed to re-construct the body of the vehicle and ply it, only after its fitness is certified.

The petitioner contends that the impugned order cannot be sustained in law or on facts. According to her, the grounds mentioned in the impugned order are totally at variance with those mentioned in the show cause notice and that the explanation submitted by her was not at all taken into account.

On behalf of the respondents, a counter affidavit is filed. It is stated that it is competent for the second respondent to cause inspection of the vehicle and cancel the fitness certificate, at any point of time. Reference is made to Section 56 of the Motor Vehicles Act, 1988 and Rule 106 of the Rules and it is urged that the impugned order does not warrant any interference.

Heard the learned counsel for the petitioner and the learned Government Pleader for Transport.

The second respondent issued fitness certificate to the vehicle of the petitioner in April 2002. It was valid for a period of one year. Before the expiry of that period, the respondents directed the petitioner to produce the vehicle on 25.02.2003 and straight away, cancelled the fitness certificate, alleging certain discrepancies. It was not alleged that the petitioner had undertaken any alteration of the vehicle, after the fitness certificate was issued in April 2002. Further, no notice was issued, before the fitness certificate was cancelled. This Court found fault with such an

exercise and ultimately, directed that the order of cancellation be treated as a show cause notice.

In the order of cancellation of the fitness certificate, which, in turn, was directed to be treated as a show cause notice, the following defects or deviations are pointed out:

1. *The seats/berths are fixed along the bus instead of across the bus.*
2. *The width of the berths is 950 mm as against 500 mm which is almost double the minimum size of the berth.*
3. *The width of the upper birth is 940 mm as against 625 mm which is almost double the minimum size of the berth.*
4. *There is no shift accommodation during day travel.*
5. *The lower birth is fixed at a height of less than 450 mm.*

As observed by this Court, the petitioner submitted her explanation, denying the allegations. It was ultimately stated that the specifications mentioned in Rule 351 of the Rules are mostly minimum requirements and that the measurements, in excess of minimum requirements, cannot be treated as violations.

After receiving the explanation from the petitioner, the respondents once again insisted upon the petitioner to produce the vehicle. In compliance with the same, the vehicle was produced on 18.09.2003. On that day itself, the impugned order was passed, pointing out the following defects:

1. *There is no coupe to accommodate four berths and during day travel to accommodate (4) passengers only.*
2. *There is no gangway behind the driver and off-side of the coupe as required under sub-Rule 9 of Rule 351-A of APMV Rules, 1989.*
3. *There is no leg room as required under sub-rule 12 of Rule 351-A of APMV Rules, 1989.*
4. *The berths are not provided with a distance of 300 M.M facing each other as required under sub-Rule 26 of Rule 351-A of APMV Rules, 1989.*
5. *The entrance cum exit door is not provided in the front of the vehicle on the left side of the vehicles as equipped under sub-rule 1 of Rule 351-A of APMV Rules, 1989.*

A comparison of these defects with those mentioned in the show cause notice clearly discloses that there is a serious variation. In a way, it can be said that the respondents searched for new reasons and grounds, to proceed against the petitioner. Further, the detailed explanation submitted by the petitioner was not referred to, much less, discussed, by the first respondent, in the impugned order.

A scrutiny of the sequence of events and the contents of the show cause notice, on the one hand, and the impugned order, on the other, gives an impression that the respondents were determined somehow or the other, to prevent the plying of the vehicle by the petitioner. Even on merits, it is evident that the so-called deviations on the part of the petitioner, if at all, have only resulted in a greater comfort to the passengers. The respondents did not state as to how the Rule was violated. What is stated in the order of cancellation of the fitness certificate or the impugned order is only an excuse, to hide up their ulterior motive. This Court takes a serious exception to the manner, in which the respondents have conducted themselves. Such a vindictive attitude does not befit an Officer, discharging the statutory functions.

The writ petition is, accordingly, allowed, by imposing the costs of Rs.5,000/- (Rupees Five Thousand Only), payable to the petitioner, within two (2) months from today.

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01.08.2007

JSU